IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

FAMILY COURT APPEAL NO. 27 OF 2004

Shri Arun Shantaram Wadekar .. Appellant

vs

Mrs Seema Arun Wadekar .. Respondent

..

Mr.D.M.Gupte for Appellant

CORAM : F.I.REBELLO AND

N.H.PATIL, JJ

DATE : 27TH APRIL, 2004.

P.C.

1. Two things emerge from reading of the order

2. Firstly, petition for divorce by mutual consent was presented on 3rd June, 2003. Statement of the parties was recorded by the court on 5th November, 2003. In other words, before the expiry of six months.

Learned counsel for the parties points out that the said statement was recorded in the absence of the counsel. The date given for appearance in the court was 5th December, 2003, 5th November, 2003 was given to appear before

the Councillor. It is therefore, submitted that the appellant should not be blamed for the same.

3. Second aspect of the matter is that in paragraph 5, the learned Judge has observed as under :

" The wife has also expressed her desire not go get the marriage dissolved. She made a oral statement that she should get the arrears of maintenance and future maintenance also. "

Learned counsel states that the statement recorded before the learned Judge was that wife had agreed to dissolve the marriage and no such statement as recorded was made. If that be so, it would be open to the learned counsel to move the learned Family court by way of a review petition.

Considering the above, learned counsel seeks leave to withdraw the appeal to file appropriate review before the Family court on both aspects of the matter which have been adverted to above.

4. Appeal is dismissed with liberty to apply for review. No order as to costs. Considering

that the appeal was filed on 20th February, 2004 and the time for issuance of certified copy, the lower court to consider this aspect for condonation of delay when an application for review is preferred.

5. P.S. to issue an authenticated copy.

F.I.REBELLO, J

N.H.PATIL, J

1. The matter was kept back by learned counsel for the appellant to show as to how an application for divorce by mutual consent was maintainable.

2. Learned counsel pointed out that the petition was presented on 3rd June, 2003. Subsequent application was presented on 5th November, 2003,. In other words, before the expiry of six months. Section 13 (a) of the Hindu Marriage Act requires that an application must be made after 6 months and not before the expiry of 18 months. Apart from that the record

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of the court also shows that the wife had withdrawn her consent. If that be the case, the

application as filed is not maintainable.

Hence, rejected.

F.I.REBELLO, J

N.H.PATIL, J

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CIVIL APPLICATION NO.472 OF 2004

IN

FIRST APPEAL NO.204 OF 2004

Nichrome India Ltd ... Applicant

vs

M/s A.V.Cleaning Products P.Ltd ..Respondent

Mr.V.C.Kotwal, Sr.Advocate with Mr.S.K.Sen and

Mr.Mehul Shah for Applicant

Mr.V.H.Shinde for Respondent

CORAM: F.I.REBELLO AND

N.H.PATIL, JJ

DATE: 27TH APRIL, 2004.

P.C.

1. Heard learned counsel for the parties.

2. The applicant to deposit a sum of Rs.20,00,000/- within a period of three weeks from today, besides furnish a bank guarantee in the sum of Rs.5,00,000/-. It will be open to the respondents on the amount being deposited to withdraw the said amount on furnishing the bank guarantee to the satisfaction of the Registrar General. It is made clear that the bank

guarantee should be furnished both by the applicant and by the respondent for the respective amount and which are to be kept alive pending the hearing and disposal of the appeal and for a period of eight weeks thereafter.

3. There will be ad interim relief in terms of prayer clause (a) which will stand confirmed on the applicant depositing the sum of Rs.20,00,000/- and furnishing the bank guarantee in the sum of Rs.5,00,000/-.

4. In so far as the issue of perjury is concerned, it will be open to the trial court to proceed with the matter but, not to pass final orders without further orders from this court.

5. Application is disposed of accordingly.

F.I.REBELLO, J

N.H.PATIL, J

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CIVIL APPLICATION NO. 1536 of 2004

IN

F.C.A. NO.49 OF 2003

Sadanand Gurav .. Applicant

vs

Mahadev Gurav .. Respondent

..

Mr.Dilip Rai i/b Raval Shah & Co for Applicant

Ms L.H.Belindage for Respondent

CORAM: F.I.REBELLO AND

N.H.PATIL, JJ

DATE: 27TH APRIL, 2004.

P.C.

1. This application by the applicant father for access to the child. After hearing the parties, we had called for a report of the Marriage Counsellor working at Family Court, Bombay. The report has since been forwarded and is dated 8th April, 2004. The concluding part of the report reads as under :

" Hence, the regular access may be given at

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welfare agency, under supervision and in absence of any relatives, so that the father and child can be assisted by social worker. However, the vacation access may be given only during the day time for few days initialy. Later on overnight access may be worked out. "

2. Considering the above, the following directions :

The father will have access to the child under the supervision of Ms Nalini of Manav Sevak Sangh on 7th May, 2004, 8th May, 2004 and 9th May, 2004 between 9 a.m. and 1 p.m.

3. The child will also have access to the father on 22nd May, 2004 and on 23rd May, 2004,. On 22nd May, 2004 access would be at 9 a.m. if Ms Nalini finds by that time that it is possible to have an access for the entire day. We leave it to her judgment that on one of the days access can be for the whole day.

4. S.O. to 14th June, 2004 for further directions.

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5. P.S. to issue an authenticated copy of the order.

6. All concerned to act on a copy of the order authenticated by the P.S.

F.I.REBELLO, J

N.H.PATIL, J

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

F.C.A. NO.99 OF 2000

Alan Lambert Mathew ... Appellant

vs

Mrs Sunita Alan Mathew ... Respondent

..

Ms G.P.Mulekar for Appellant

Mr.S.M.Kamble for Respondent no.1

..

CORAM : F.I.REBELLO AND

N.H.PATIL, JJ

DATE: 27TH APRIL, 2004

P.C.

1. On 31st March, 2004 statement was recorded that the appellant and the respondent are residing as husband and wife. Appeal was not disposed of as certain proceedings initiated by the wife was pending before the trial court.

2. On behalf of the respondent wife, learned counsel makes a statement that a criminal case No.1197 of 1998 pending before the J.M.F.C. Kolhapur. They have applied for withdrawal and the applciation will come up on 15th May, 2004.

There is another proceeding being Regular Civil Suit No. 447 of 1998 which is pending before the C.J.S.D.Kolhapur wherein an application has been moved for withdrawal of the suit. Apart from that, there is Misc. Application No.217 of 1998 filed under section 125 of the Criminal Procedure Code which is pending before the J.M.F.C. Kolhapur which also learned counsel has instructions to state that they have applied for withdrawal. In the event the application have not yet been filed, the respondent wife is directed to file the application within a period of two weeks from today and the said application will be disposed of in terms hereinafter stated.

3. Considering the above, the learned J.M.F.C. as well as C.J.S.D. Kolhapur are directed to dispose of the applications and by dismissing the complaint and permitting the withdrawal of the suit. Considering the above, nothing further survives in the appeal which is accordingly disposed of.

4. P.S. to issue an authenticated copy.

5. All concerned to act on a copy of the authenticated order.

F.I.REBELLO, J

N.H,PATIL, J